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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,013	03/31/2004	Odile Aubrun-Sonneville	238320US0	5266

22850 7590 03/04/2010  
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1619

NOTIFICATION DATE	DELIVERY MODE
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03/04/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/813,013	<b>Applicant(s)</b> AUBRUN-SONNEVILLE ET AL.	
	<b>Examiner</b> JYOTHSNA A. VENKAT	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,9,10 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,9,10 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Receipt is acknowledged of amendment and remarks filed on 1/5/2010. Claims 6-8, 13-14 and 20 have been cancelled as per applicants' amendment dated 1/5/10.

#### **Status of claims**

**Claims 2, 6-8, 13-14 and 20 are cancelled.** Claims 11-12 are withdrawn from consideration as being drawn to non-elected invention (**Election without traverse**). Claims 1, 3-5, 9-10 and 15-19 are currently examined in the application.

#### ***Claim Rejections - 35 USC § 103***

Claims , 3-5, 9-10 and 15-19 are rejected under 35 U.S.C. 103 as being obvious over U.S. Patent No. 6,645,476 ('476).

Patent '476 , discloses a water-soluble co-polymer for use in cosmetic compositions, wherein the co-polymer contains a macro- monomer having a hydrophobic moiety and one or more olefinically unsaturated co- monomers which contain a sulfur atom (see abstract and col. 2, lines 18-28). Patent discloses that the co-polymers have a number molecular weight of 1,000-1,5000,000 g/mol (see col. 4, lines 1-15). See col. 3 paragraphs 1-5, compositions comprising a copolymer wherein one monomer is acrylamidopropylmethylenesulfonic acid (AMPS) or its salts and one or more macro monomers including esters of methacrylic acid with alkyl ethoxylates which include 5 to 80 ethylene oxide (EO) units and/or (C10-C22)-alkyl radicals. In col. 2 lines 50-65 patent discloses a series of olefinically unsaturated monomers. Patent discloses at col. 11, Example 2, a general polymerization procedure wherein NH<sub>3</sub>-neutralized AMPS, Genapol U-080 containing 10-1.8 carbon fatty alcohol polyglycol ethers with 8 EO units, a macro monomer, t-butanol and AIBN are reacted. Further patent discloses at col. 3 paragraphs 1

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and 2 that the degree of neutralization is preferably between 70-100% meeting the partially neutralized form or a totally neutralized. At col. 4 paragraph 2, patent teaches that the polymers have a number-average MW of from 1000-20,000,000 g/mol, preferably 20,000 to 5,000,000, particularly preferably 100,000 to 1,500,000 g/mol. In col. 4, paragraph 7, patent discloses that the viscosities of the 1% strength aqueous solutions are preferably from 20,000 mPas to 100,000 mPas, in particular 60,000 mPas to 70,000 mPas. Patent discloses in col. 4 paragraphs 8 and 9 that the polymers are prepared by free-radical copolymerization with preference given to precipitation polymerization with tert-butanol. Patent discloses in col. 2 under example B olefinically unsaturated comonomers and at Col. 4 paragraph 3 teaches that in a preferred embodiment the polymers are cross linked, i.e. they contain at least one cross linker having at least two double bonds, which is copolymerized into the polymer. In col. 2, patent discloses preferred embodiments A and B and details macro monomers. Patent discloses at col. 4 paragraph 2 that the polymers can be random and in col. 3 paragraph 1 and 2 that the olefinically unsaturated acids of the polymers can be neutralized by monoalkylammonium, dialkylammomium, trialkylammomium, or tetraalkylammonium where the alkyl substituents of the ammonium ions are (C1-C22)-alkyl radicals. The monomer as presented in formula (I) of the application is disclosed by patent at col. 2, lines 25-50.

Patent at col. 3, ll 35-60 discloses suitable macro monomers and at lines 60-64 discloses using iso-(C16-C18) fatty alcohol polyglycol ethers with 25 EO units. The preferred macromer under A of patent is from ll 37-59 and **see especially the macromer Genapol LA70 (claimed instant application as formula II)** and this macromer is tested in the declaration see same column, ll 60-65 for the preferred comonomer, **which is AMPS. AMPS claimed in instant**

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**application as formula I.** The molar proportion of monomer units are anticipated by patent at col. 3 line 65 and col. 4 line 8. Patent discloses 0.5% by weight of amphiphilic copolymer in example 42. Patent discloses in example 43 an O/W after sun milk composition, in example 45 a W/O cream, in example 46 a body wash, in example 47 a baby shampoo, in example 48 an antidandruff shampoo, and in example 50 a hair gel.

Patent discloses that the co-polymers are used in combination with anionic, nonionic, cationic, zwitterionic and amphoteric surfactants to form cosmetic compositions (see col. 6, line 8-col. 7, and line 54). **Patent at col.9, ll 49-63 discloses co-emulsifiers and this includes sorbitan esters, glycerol esters, and polyglycerol esters.** The claimed species are within the genus taught by patent. Examples 41-51, disclose formulation compositions that contain the water-soluble co-polymer in combination with various surfactants, water and solvents. See col.9, lines 10-14 for emulsions. This includes claimed oil-in-water emulsions (O/W). Examples 41-43 are drawn to O/W emulsions.

One of ordinary skill in the art would prepare the compositions in the form of oil-in-water emulsions using the amphiphilic polymer and one lipophilic emulsifier and use it for topical application taught by patent '476.

### ***Response to Arguments***

Applicant's arguments filed 1/5/2010 have been fully considered but they are not persuasive.

Applicants' argue that the results in the specification and the two examples in the declaration are representative of the limited number of lipophilic emulsifiers recited in claim 1.

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In response to the above argument, the test results in the specification and declaration are not commensurate with the scope of claims. **Applicants' have not addressed first two point stated in the in final rejection and also non final rejection dated 10/7/09.**

**These points are:**

1. One compound belonging to amphiphilic polymer was tested. What is the mole percent of AMPS (this belongs to component (A))? Claim 1 recites the mole percent of AMPS as 80 mol % to 99 mol%. Example A in the declaration is silent with respect to mole percent of AMPS.

2. Genapol LA-070 belonging to component (B) was tested. **What is R2, n in Genapol LA-070?**

3. **What is the weight percent of the polymer tested in the declaration and specification and what is the weight percent of lipophilic emulsifier?**

**Claim 1 is not limited to any weight percent of the polymer or the lipophilic emulsifier.**

**Claim 1 is not limited to formula II tested in the declaration.**

The showing in the declaration and specification is not commensurate with the scope of claims since patent teaches all the claimed components. Therefore 103 rejection is deemed proper.

*Whether the unexpected results are the result of unexpectedly improved results or a property not taught by the prior art, the "objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support." In other words, the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range. In re Clemens, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980). See also In re Peterson, 315 F.3d 1325, 1329-31, 65 USPQ2d 1379, 1382-85 (Fed. Cir. 2003) (**data showing improved alloy strength with the addition of 2% rhenium did not evidence unexpected results for the entire claimed range of about 1-3% rhenium**); In re Grasselli, 713 F.2d 731, 741, 218 USPQ 769, 777 (Fed. Cir. 1983) (Claims were directed to certain catalysts containing an alkali metal. Evidence presented to rebut an obviousness rejection compared catalysts containing sodium with the prior art. The court held this evidence insufficient to rebut the*

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*prima facie case because experiments limited to sodium were not commensurate in scope with the claims.*

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EYLER YVONNE (BONNIE) can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1619